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AUTHOR	Freppel, Laura
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ABSTRACT

The purpose of these guidelines is to assist local boards of education, charter school organizers, and charter school governing boards in identifying legal, procedural, and funding issues related to serving students with disabilities in Colorado charter schools. As a best practice, charters should contain a specific plan for compliance with federal and state special education laws. These guidelines are designed to provide a framework for developing the compliance plan or revising an existing compliance plan and are also intended to help the parties to better anticipate needed special education services, including how special education services will be funded and delivered. The guidelines first provide special education funding background information and discuss funding options, including federal funds, state funds, and general funds. Three funding models utilized in Colorado for providing special education services in charter schools are described: the insurance model, the contracted model, and the combination model. Next, general negotiating considerations are identified. Following the general considerations, discussion points specific to key Individuals with Disabilities Education Act and Colorado's Exceptional Children's Education Act legal requirements are listed. Considerations address enrollment procedures, evaluations, Individualized Education Program development, related services, student placement, extended school year services, state and district assessments, and discipline. (CR)

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COLORADO CHARTER SCHOOLS SPECIAL EDUCATION GUIDELINES:

NEGOTIATING NEW AND RENEWAL CHARTER CONTRACTS FOR COLORADO CHARTER SCHOOLS

March, 2002

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Prepared By: Laura Freppel
Expert Educational
Solutions, LLC

For: Colorado Department of Education
201 East Colfax Avenue
Denver CO 80203
http://www.cde.state.co.us

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SPECIAL EDUCATION GUIDELINES FOR USE IN NEGOTIATING NEW AND RENEWAL CHARTER CONTRCTS FOR COLORADO CHARTER SCHOOLS

Purpose

Under the federal Individuals with Disabilities Education Act (IDEA) and Colorado's Exceptional Children's Educational Act (ECEA), administrative units (i.e., public school districts and boards of cooperative educational services) are responsible for ensuring compliance with the IDEA and the ECEA.[1] Under Colorado law, charter schools must comply with all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability or the need for special education services. Students with disabilities who attend public charter schools are entitled to the same rights as special education students attending traditional public schools.

The purpose of these guidelines is to assist local boards of education, charter school organizers and charter school governing boards in identifying legal, procedural and funding issues related to serving students with disabilities in Colorado charter schools. As a best practice, charters should contain a specific plan for compliance with federal and state special education laws. These guidelines provide a framework for developing the compliance plan or revising an existing compliance plan, and are also intended to help the parties to better anticipate needed special education services, including how special education services will be funded and delivered.

Structure of the Guidelines

The guidelines first provide special education funding background information and discuss funding options. Next, general negotiating considerations are identified. Following the general considerations, discussion points specific to key IDEA and ECEA legal requirements are listed. It is important to note that these guidelines cover major areas but are not an exhaustive review of all special education requirements.

Funding Options

In Colorado, special education is funded by a combination of sources.

a) **Federal funds.** The IDEA funds approximately 10% of the overall cost of special education programs. In most school districts, federal funds are distributed to the school district and the funds are then shared across the school district.

b) **State funds.** State categorical special education funding under the ECEA is distributed, on a per pupil basis, directly to school districts in

[1] For ease of reference, the remainder of these guidelines will refer only to school districts when discussing the responsibilities of administrative units.

two ways. The bulk of ECEA funds (base funds) are for school districts to provide special education services to students with disabilities enrolled in the school district. The balance is available to school districts specifically for costs incurred for students with disabilities who live in eligible facilities located within the boundaries of the school districts. Less than 20% of special education is funded with state categorical moneys.

c) **General funds.** Approximately 70% of special education is funded through a school district's general fund. General funds come from state taxes, local specific ownership (vehicle registration) taxes and local property taxes. Consequently, charter schools should plan on subsidizing special education services out of their general fund by at least 70%.

Under the IDEA, local educational agencies (e.g., school districts) must serve students with disabilities attending their charter schools in the same manner as they serve special education students in their traditional schools. Similarly, school districts must provide IDEA funds to their charter schools in the same manner as they provide those funds to their traditional schools. Within these legal constraints, the parties negotiating a new charter or a renewal charter may negotiate both the funding and the responsibilities for providing special education services.

In Colorado, special education funds are passed through to charter schools in the form of cash, in-kind services, and pooled monies. Historically, three funding models have been utilized in Colorado: the insurance model, the contracted model and the combination model.

Under the **insurance model**, the charter school contracts with the school district to directly provide all special education services. Under this model, the school district controls the provision of services and is primarily responsible for legal compliance. The charter school pays the school district a fee based on a per pupil formula that counts all students enrolled in the charter school. Such fees are centrally pooled and used by the school district to provide the services required by individualized education programs (IEPs). The charter school may exercise little or no control regarding services provision, but because the school district is providing direct services, the charter school has significantly less exposure for legal noncompliance. Some charter schools have reported[2] a number of advantages and disadvantages to this model. Reported advantages include benefits related to accessing the school district's expertise, predictability in budgeting and not having to hire special education staff while also providing high quality special education services that are consistent with those provided to students with disabilities in traditional district schools. Some reported disadvantages are that the insurance model is potentially more expensive than other funding models, and district special education staff who are assigned to the

[2] See *The State of Charter Schools in Colorado: 1999-2000*, pp. 26-28 (CDE, March 2001)

charter school must answer to two supervising entities and do not always share the charter school's philosophy. Many Colorado school districts mandate the insurance model based on their legal interpretation of the IDEA requirement that a school district must treat its charter schools in the same manner as it treats its traditional schools with regard to special education services provision and IDEA funding.

Under the **contracted model**, the school district passes through to the charter school its proportionate share of federal and state special education funding. The charter school provides special education services either by hiring its own service providers or by contracting with independent third parties. Under this model, the charter school exercises control over services provision but also bears increased risks for noncompliance and the costs of serving disabled students with moderate to severe needs. The school district remains legally responsible for the charter school's compliance with federal and state special education laws. Under the contracted model, some charter schools have reported a number of benefits including increased autonomy from the school district and the sense that this is a less expensive model.

Under the **combination model**, the charter school and the school district negotiate a combination of district-contracted services and services to be provided by the charter school. This model encourages collaboration between the school district and charter school and is also the most flexible because each party can identify the critical areas of importance to it (i.e., control, autonomy, risk exposure, etc.) and then negotiate for those values. Advantages reported by some charter schools include increased opportunity to hire special education staff who are supportive of the charter school's mission; opportunities for interaction and relationship-building between the school district and the school; and the ability to offer integrated services to students with disabilities. Reported disadvantages include increased administrative time in coordinating the schedules of district and school personnel.

General Negotiating Considerations

_____ What special education services is the charter school already providing?

_____ What special education services does the charter school plan on providing?

_____ What special education services is the school district providing?

_____ What special education services does the school district plan on providing? Where will those services be provided?

_____ What school district programs and services are centralized such that they will not be provided at the charter school?

_____ How will special education services be funded?

_____ Regardless of the funding mechanism, how will the school district share its special education procedures, policies, guidelines, memoranda, and other specialized resource materials (e.g., IEP software and forms, procedural safeguards notice, etc.) with the charter school?

_____ Regardless of the funding mechanism, how will the school district include the charter school in the school district's communications to its schools regarding new and important special education information/updates?

_____ Regardless of the funding mechanism, how will the school district make in-service training and other professional development opportunities provided by the school district to its special education personnel available to charter school personnel?

_____ Regardless of the funding mechanism, how will the school district make its special education staff available to the charter school for purposes of technical assistance?

_____ Regardless of the funding mechanism, will the charter school make in-service training and other professional development opportunities provided by the charter school to its special education personnel available to school district special education staff?

_____ For those special education services that are provided by the charter school, will the school district provide to the charter school a list of resources, vendors and contacts in order for the charter school to purchase special education materials (e.g., assessment instruments, IEP software, etc.)?

_____ Will the school district require its vendors to provide the same discounts to the charter school as are provided to the school district?

_____ For those special education services that are provided by the school district, will the charter school be given the opportunity to participate in the hiring and/or selection of the district service providers

(special education teachers, related services providers, paraprofessionals) who will be assigned to the charter school?

_____ For those special education services that are provided by the charter school, will the school district have the opportunity to review and comment on the charter school's service providers and other vendors?

_____ When a charter school requires legal advice regarding a special education matter, who will choose the attorney? What entity will be responsible for the resulting attorneys' fees and legal costs?

_____ How will the charter school report to the school district required information regarding special education services and expenditures?

_____ How will pupil counts for special education funding be conducted?

_____ How will the school district determine the charter school's legal compliance with federal and state special education laws?

Specific Negotiating Considerations

Enrollment Procedures: Under state law, charter schools must be open to any child who resides within the authorizing school district, including children with disabilities. If space is available, charter schools may also enroll nonresident children. Enrollment decisions by a charter school must be made in a nondiscriminatory manner.

_____ How will the charter school make nondiscriminatory enrollment decisions involving children with disabilities?

_____ What procedures will the charter school use to determine whether it can serve a child with a disability?

_____ What communications will occur between the school district's special education director and the charter school administrator when the charter school anticipates that it will be enrolling a child with a disability?

Procedures for Transfer Students: Any special education services for a child with a disability who transfers into a school district must be provided (1) immediately if the services are available, (2) with three school days of enrollment if the services need to be developed, or (3) consistent with other options agreed to in writing by the parents and the school district.

_____ What communications will occur between the school district's special education director and the charter school administrator when the

charter school anticipates that it will be enrolling a newly transferred student on an IEP?

Initial Evaluations. The IDEA and the ECEA require that an initial evaluation be conducted before providing special education and related services to an eligible child with a disability. The IDEA and the ECEA also require that re-evaluations occur at least every three years.

_____ What entity will be responsible for obtaining informed parental consent for initial evaluations and re-evaluations?

_____ What entity will be responsible for tracking special education referral, initial evaluation and re-evaluation timelines?

_____ What entity will be responsible for conducting initial evaluations and re-evaluations?

_____ If the charter school will be conducting initial evaluations and re-evaluations, how will the school district share with the charter school the district's assessment policies and procedures, and also its list of approved assessment instruments?

_____ If the charter school will be conducting initial evaluations and re-evaluations, how will charter school assessment personnel consult with school district assessment personnel?

_____ If the charter school will be conducting initial evaluations and re-evaluations, how will the charter school obtain the necessary assessment instruments? (a) will the school district share the school district's approved assessment instruments with the charter school at no cost? (b) will the school district provide the assessment instruments to the charter school at the district's cost? or (c) will the charter school independently obtain the assessment instruments? If so, will the school district require its vendors to extend to the charter school any discounts that it affords to the school district?

_____ If the charter school will be conducting initial evaluations and re-evaluations, will the school district give charter school assessment personnel the opportunity to attend any in-service training in these areas that are sponsored by the school district?

IEP Development/Review Meetings: The IDEA and the ECEA require that an IEP must be developed for each child with a disability. Each student's IEP must be reviewed at least annually. The IEP team must be comprised of individuals serving specific roles, including the school district's special education director or designee.

_____ What communications will occur between the charter school and the district's special education director when IEP meetings are being scheduled?

_____ What entity will be responsible for tracking IEP development and review timelines?

_____ What entity will be responsible for preparing the required notices for IEP meetings and related documentation?

_____ How will the school district share its IEP software, forms and instructions with the charter school?

_____ What entity will be responsible for obtaining written parental consent for initial placement?

_____ What entity will be responsible for transition services and arranging for the attendance of other public agencies necessary for the implementation of transition services?

Related Services: Under the IDEA and the ECEA, related services are supportive services that may be required to assist a child with a disability to benefit from special education. The kinds of related services are many and include transportation, speech-language pathology services, psychological and counseling services, occupational therapy, and health care services.

_____ When a child with a disability requires a related service, how will the related service be funded? Which entity will be responsible for providing the related service?

Transportation and assistive technology are especially important related services to address.

_____ When a child with disability requires transportation services, under what circumstances and how will this related service be funded? Which entity will be responsible for providing this related service?

_____ How will assistive technology needs be determined? When a child with a disability requires expensive assistive technology, such as the provision of a computer for use at home, how will this service be funded?

Programming/Placement: The IDEA and the ECEA require that the placement or program of a child with a disability must be in the least restrictive environment (LRE). LRE means that (1) to the maximum extent appropriate, a child with a disability is educated with nondisabled students, and (2) segregation of the

disabled student from the regular education environment occurs only if the nature and severity of the child's disability is such that education in the regular classroom with the use of supplementary aids and services cannot be achieved satisfactorily.

_____ What special education services is the charter school providing or planning to provide?

_____ What special education services provided by the school district can be provided at the charter school? What special education services provided by the school district are centralized and not available at the charter school? How will the latter services be provided to students who attend the charter school if they are needed?

_____ How will the charter school provide curricular modifications and adaptations to students with disabilities in order to allow them to attend the school?

Extended School Year (ESY) Services : ESY services are special education and related services that are provided to a child with a disability (1) beyond the normal school year (e.g., during the summer months, before or after school, during school year breaks, etc), (2) in accordance with the child's IEP, and (3) at no cost to the child's parents. ESY services are intended to maintain already learned skills concerning the child's IEP goals rather than teaching the child new skills.

_____ If the IEP team determines that a child with a disability needs ESY services, what entity will provide those services?

State and District Assessments: The IDEA requires that each student's IEP contain a statement of any individual modifications in the administration of state or district assessments of student achievement in which the child will be participating or, if the IEP team decides that the child will not participate, a statement why the child will not participate. In Colorado, every student with a disability must participate in the Colorado State Assessment Program (CSAP) or the CSAP-Alternate (CSAP-A).

_____ Does the school district have policies, procedures or guidelines available to assist IEP teams in making decisions about a child's participation in the CSAP or the CSAP-A?

Disciplining Students with Disabilities: Prior to subjecting a child with a disability to discipline that constitutes a change of placement, the child's IEP team must be convened to determine whether the child's behavior is a manifestation of his or her disability. A change of placement occurs when a child is suspended or

expelled for more than ten consecutive school days in a school year, or when a series of suspensions of ten consecutive school days or less constitute a pattern because of their proximity to each other and because of other factors.

_____ What discipline (suspension and/or expulsion) will the charter school apply?

_____ What discipline (suspension and/or expulsion) will the school district apply?

_____ Will the charter school develop its own expertise in conducting manifestation determination reviews or will it use school district personnel? Will the school district provide technical assistance when requested?

_____ When the IEP team is required to conduct a functional behavioral assessment and then develop a behavior intervention plan for a child with a disability, will the charter school develop its own expertise for these procedures or will it use school district personnel? Will the school district provide technical assistance?

_____ To what extent will the charter school be able to utilize interim alternative educational settings (IAES) available in the school district when a child with a disability engages in behavior involving dangerous weapons, illegal drugs or controlled substances?

_____ If the charter school believes that a child with a disability is a danger to himself/herself or others, what communications will occur between the charter school and the school district in order for the charter school to access appropriate procedures, such as requesting an expedited hearing?

_____ When a charter school requires legal advice regarding a disciplinary issue involving a student with a disability, which entity will select legal counsel? Which entity will be responsible for the resulting attorneys' fees and legal costs?

Programming Disputes Involving Parents: When a parent disagrees with an IEP, the parent may refuse to agree to the IEP team's recommended placement or withhold consent for certain services. When such a disagreement arises, the parent may request a due process hearing.

_____ When a parent expresses disagreement with a proposed or existing IEP, what communications will occur between the charter school and the school district?

_____ When a charter school requires legal advice regarding a special education dispute with a parent, which entity will select legal counsel? Which entity will be responsible for the resulting attorneys' fees and legal costs?

_____ In those cases where the charter school is providing special education services, will the charter school carry liability insurance that will indemnify the school district for its legal costs in defending claims alleging that the charter school has violated the IDEA or the ECEA?

Section 504 Eligibility and Services: Section 504 of the Rehabilitation Act has specific procedural requirements for the identification, evaluation and placement of students with disabilities. A child who is determined not to be eligible under the IDEA and the ECEA may nevertheless be eligible for Section 504 educational services.

_____ If the special education eligibility team determines that a student is not eligible for services under the IDEA, what entity will be responsible for determining whether the child qualifies for educational services under Section 504?

_____ If a child qualifies for Section 504 educational services, what entity will be responsible for developing the Section 504 plan and the provision of appropriate educational services?

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